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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY - 6 1992

Federal Communications Commission
Office of the Secretary

In the Matter of:

MOTOROLA SATELLITE
COMMUNICATIONS, INC.

Request for Pioneer's Preference
with Regard to Proposals to
Establish Satellite Systems
in the 1610-1626.5 MHz and
2483.5-2500 MHz Bands.

ET Docket No. 92-28

PP-32

EX PARTE OR LATE FILED

To: Office of Engineering and Technology

OPPOSITION TO MOTIONS TO STRIKE

Motorola Satellite Communications, Inc. ("Motorola")
hereby files its consolidated opposition to the Motions to Strike
supplemental materials submitted by Motorola in support of the
above-captioned pioneer's preference request.^{1/}

I. INTRODUCTION

On April 10, 1992, Motorola submitted a Supplement to
its pending request for a pioneer's preference for the
technological and service innovations brought forth in its

^{1/} Constellation Communication, Inc. ("Constellation") Motion
to Strike, ET Docket No. 92-28, PP-32 (April 23, 1992); Ellipsat
Corporation ("Ellipsat") Motion to Strike Supplement to Request
for Preference, or Alternatively, to Establish New Comment Dates,
ET Docket No. 92-28, PP-32 (April 21, 1992); Loral Qualcomm
Satellite Services, Inc. ("Loral") Motion to Strike and
Opposition to Supplement to Request for Pioneer's Preference, ET
Docket No. 92-28, PP-32 (April 23, 1992); TRW Inc. ("TRW") Motion
to Strike or, in the Alternative, to Place Motorola Supplement on
Public Notice, ET Docket No. 92-28, PP-32 (April 23, 1992).

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IRIDIUM™ system.^{2/} This Supplement included patent materials relating to many of the innovations claimed by Motorola, as well as preliminary experimental test results and other information concerning the technical feasibility of the IRIDIUM™ system.^{3/} It was filed on the last day established by the Chief Engineer of the Office of Engineering and Technology for accepting pioneer's preference requests related to this proceeding.^{4/}

Motorola's opponents have moved to strike the Supplement on the ground that these materials allegedly were not timely filed. In the alternative, they ask the Commission to

^{2/} Motorola filed its application to construct, launch and operate the IRIDIUM™ system on December 3, 1990. See Application of Motorola Satellite Communications, Inc. for IRIDIUM™ -- A Low Earth Orbit Mobile Satellite System, File Nos. 9-DSS-P-91(87) & CSS-91-010 (Dec. 3, 1990). Additional supporting information was filed in a supplement in February 1991. See Supplemental Information to IRIDIUM™ System Application, File Nos. 9-DSS-P-91(87) & CSS-91-010 (February 22, 1991). In conjunction with its application for IRIDIUM™, Motorola also submitted a request for a pioneer's preference. Following the adoption of the Commission's pioneer's preference rules, Motorola's request for a pioneer's preference was renewed by a separate filing on July 30, 1991. See Request for Pioneer's Preference, Motorola Satellite Communications Inc. (July 30, 1991). In that filing, Motorola incorporated by reference those portions of its pending application which bore upon its pioneer's preference request. Id. at 1 n.2.

^{3/} See Supplement to Request for Pioneer's Preference (April 10, 1992) ("Supplement"). The Supplement included a 15-page brief and two appendices. One of the appendices contained confidential proprietary information and was produced in a sealed envelope only to the Commission with a request for confidential treatment. The brief and the other appendix and a copy of the letter request for confidential treatment describing the contents of the sealed appendix were sent to all counsel of record, as well as to the Commission. The Chief of the Frequency Allocation Branch recently granted in part, and denied in part, requests by TRW, Loral and Ellipsat to release the confidential information pursuant to the Freedom of Information Act. See Letters from David R. Siddall, CN92-83, CN92-86 & CN92-88 (May 4, 1992).

^{4/} See Public Notice, Mimeo No. 22205 (March 11, 1992).

establish a new comment period to respond to the materials contained in the Supplement. As set forth below, the Supplement was filed in a timely manner and in accordance with well established Commission procedures. In any event, Motorola does not object to an expedited comment cycle for this new material so long as such additional comments do not delay the tentative selection of a pioneer's preference in this proceeding.^{5/} The Commission therefore should deny the subject motions to strike Motorola's Supplement.

II. MOTOROLA'S SUPPLEMENT WAS TIMELY FILED AND
HAS NOT PREJUDICED THE OTHER PARTIES

Motorola timely filed the Supplement to its pending pioneer's preference request on the last date established by the Chief Engineer for accepting preference requests to be considered with pioneer's preference requests already on file.

The Chief Engineer established different deadlines in this proceeding for commenting on existing pioneer's preference requests and for filing additional pioneer's preference requests. Thus, the Chief Engineer's Office issued a Public Notice on March 9, 1992, which announced the acceptance of five pioneer's preference requests (including Motorola's) and provided that

^{5/} Once the Commission makes its preliminary pioneer's preference determinations, parties to this proceeding will have an opportunity to comment on the basis for the Commission's tentative decision.

initial "[c]omments must be submitted by April 8, 1992."^{6/} Two days later, the Chief Engineer's Office issued another Public Notice which established April 10, 1992 as the cut-off date for filing "any additional pioneer's preference requests with regard to proposals to establish a system or systems of low-Earth orbit satellites or other satellite systems. . . ."^{7/}

Motorola's Supplement was filed within the deadline prescribed by the second Public Notice. It contained new material and technical data not included in Motorola's earlier pioneer's preference request. The patent materials, news clippings, technical papers, computer diskette, and videotape included in the Supplement are substantive evidence probative of the uniqueness, innovativeness, and technical feasibility of many of the components of the IRIDIUM™ system. Motorola's opponents claim that the Supplement should have been filed two days earlier in accordance with the deadline for submitting comments to pending pioneer's preference requests. The Supplement, however, and the materials appended thereto are not "comments," but instead must be viewed as relevant new materials which were appropriate to file by the deadline for additional pioneer's preference requests."^{8/}

^{6/} See Public Notice, "Requests for Pioneer's Preference Filed," Mimeo No. 22153 (Mar. 9, 1992).

^{7/} See Public Notice, "Deadline to File Pioneer's Preference Requests Low-Earth Orbit Satellites Above 1 GHz (ET Docket No. 92-28)," Mimeo No. 22205 (Mar. 11, 1992).

^{8/} In this regard, Motorola's submission is not materially different, in a procedural sense, from Ellipsat's application for its ELLIPSO II system which was filed by the RDSS cut-off date
(continued...)

Motorola's submission of its Supplement on the April 10, 1992 deadline is also consistent with the procedures subsequently elaborated upon in other pioneer's preference proceedings. For example, in ET Docket No. 92-100 the Chief Engineer issued several Public Notices establishing comment dates and new preference request deadlines in the "900 MHz Narrowband Data and Paging" proceedings. Two Public Notices set comment cycles for petitions for rulemaking and pioneer's preference requests already received, while another Public Notice established deadlines both for filing new requests and for existing pioneer's preference applicants to submit demonstrations of technical feasibility or preliminary experimental results.^{8/}

The real complaint of the parties opposing acceptance of Motorola's supplemental filing is with the fact that the two Public Notices in this proceeding established different dates for the filing of comments and submission of additional materials in support of pending pioneer's preference requests. Motorola should not be penalized, however, for the establishment of

^{8/} (...continued)
established for its earlier-filed application for ELLIPSO I. See Public Notice, Report No. DS-1068 (April 1, 1991); File No 18-DSS-P-91(18).

^{9/} See Public Notice, "Petitions for Rule Making Filed," Mimeo No. 22914 (April 30, 1992) ("Comments must be submitted by June 1, 1992. Reply comments must be submitted by June 16, 1992"); Public Notice, "Requests for Pioneer's Preference Filed," Mimeo No. 22915 (April 30, 1992); Public Notice, "Deadline to File Pioneer's Preference Requests 900 MHz Narrowband Data and Paging," Mimeo No. 22922 (April 30, 1992) ("June 1, 1992, will be the final day for filing any additional pioneer's preference requests June 1, 1992, will also be the final day for a pioneer's preference applicant to submit the demonstration of technical feasibility or preliminary experimental results required to be filed as part of its request.")

different deadlines for the submission of comments and new materials in support of its pioneer's preference request.

The opposing parties clearly were on notice of both the April 8 and the April 10 deadlines, and cannot claim to have been unaware of the possibility that supplemental materials relevant to pending pioneer's preference requests could have been filed on the latter date. In any event, none of these parties seriously can claim any prejudice from the filing by Motorola of its Supplement. As Loral's motion demonstrates, it had adequate time to review and criticize Motorola's supplemental materials in its reply comments in this proceeding.^{10/}

III. MOTOROLA'S SUPPLEMENT SHOULD NOT BE TREATED AS A NEW PIONEER'S PREFERENCE REQUEST

The parties opposing the acceptance of Motorola's supplemental filing further suggest that the Commission treat the Supplement as a new request for pioneer's preference, if it does not grant their motions to strike. They request that new comment dates be set with more time given for them to consider the materials submitted by Motorola.

The materials and information contained in the Supplement support Motorola's original request for a preference, and cannot be viewed as a separate request for a pioneer's preference. Moreover, as noted above, Loral's reply comments in this proceeding already contains its reaction to the materials in

^{10/} See Loral's Motion to Strike and Opposition to Supplement, at 2-4.

the Supplement. To the extent that the opponents complain about late-receipt of the Supplement, their complaint lies with the U.S. Post Office and not Motorola.^{11/}

Motorola has no objection to an expedited comment cycle on the Supplement so long as this additional time does not delay the Commission's preliminary determination of the award of a pioneer's preference. There will be ample opportunity during subsequent proceedings and before the award of a final preference for interested parties to comment upon Motorola's latest submission.

IV. MOTOROLA'S SUPPLEMENT SHOULD NOT
BE STRICKEN AS REPETITIOUS MATERIAL

Loral characterizes the majority of the materials in the Supplement as "repetitive," untimely, and not probative or relevant to the Commission's consideration of Motorola's pioneer's preference request.^{12/} These criticisms must be rejected as unfounded.

First, the press clippings and news accounts submitted by Motorola go directly to the pioneering nature of the IRIDIUM™ system and the fact that Motorola is the true innovator of many of the new services and technologies proposed by several of the

^{11/} Motorola properly mailed the Supplement on April, 10, 1992, in accordance with the Commission's rules. When counsel for Motorola was contacted by counsel for Ellipsat with a request for expedited delivery, a copy was made available for pickup within the time period one would expect for the mail to deliver the Supplement.

^{12/} Loral Motion at 3.


other applicants in this proceeding. Second, the scientific descriptions and preliminary test results in the Supplement provide further evidence of innovativeness and the technical feasibility of the project. Finally, the Motorola patents, one issued May 21, 1991 and other issued March 10, 1992, are both recent and significant evidence of Motorola's investment in intellectual property and further demonstrate several of the unique features of the IRIDIUM™ system.


V. CONCLUSION

For the foregoing reasons, the Commission should deny these motions to strike.

Respectfully submitted,

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May 6, 1992

CERTIFICATE OF SERVICE

I, Philip L. Malet, hereby certify that the copies of the foregoing Opposition to Motions To Strike were served by first-class mail, postage prepaid, this 6th day of May, 1992, on the following persons:

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